

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In Re:)	Case No. 96-31309
)	Chapter 13
MARY LOUISE CHAMBERS)	
)	
Debtor.)	
_____)	

ORDER

This matter comes before the Court upon the Court's sua sponte Order entered on August 15, 1996 to Appear and Show Cause why the attorney for the Debtor, Patricia King, should not be held in contempt for her failure to remit any fees she had received in connection with this case pursuant to a court order entered on July 24, 1996 and why the case should not be dismissed. The Court had previously entered the July 24th Order based on the apparent facts that King had filed a Chapter 13 on the behalf of a decedent's estate, not an individual, and that King had accepted \$170.00 as a pre-petition retainer, while proposing to pay the filing fee in installments. Both are clearly prohibited by the Bankruptcy Code and Rules. A hearing was held on the August 15th Show Cause Order in Charlotte, North Carolina on August 27, 1996. Based on that hearing and the Court's records, the following appears:

1. Patricia King, Esq. filed this Chapter 13 case on July 10, 1996 as attorney for the Debtor on behalf of Lee H. King, the Administrator for the Estate of Mary Louise Chambers ("Debtor"). Ms. Chambers was deceased at the time of the Bankruptcy filing, and the apparent purpose of the filing was to stop a foreclosure on real property of the decedent's estate. This was in contravention

of section 109(e) of the Bankruptcy Code, which mandates that only individuals are eligible to file Chapter 13.

2. In addition, Ms. King filed an application to pay filing fees in installments on behalf of the Debtor, while accepting a pre-petition retainer of \$170.00, as evidenced by her statement filed in compliance with Federal Rule of Bankruptcy Procedure 2016(b). This arrangement is not permitted under Rule 1006(3) of the Bankruptcy Rules.

3. As a result of the above facts, the Court entered an Order sua sponte on July 12, 1996 ordering the Debtor and counsel, Ms. King, to appear and show cause why the case should not be dismissed based upon (1) the apparent lack of eligibility of the Debtor to file Chapter 13 and, (2) the failure to pay the filing fees as a condition precedent to compensating counsel. A hearing was noticed to all parties, including Ms. King, for 9:30 a.m. on July 24, 1996 in Charlotte, North Carolina.

4. At the July 24 hearing, the Debtor and Ms. King failed to appear at 9:30 a.m., and the case was dismissed by the Court. Further, the Court ordered Ms. King to immediately refund any fees she received in connection with the representation of the Debtor in this case. Later, Ms. King appeared in the undersigned's chambers at approximately 2:30 p.m. on July 24 and indicated that a scheduling error had caused her to miss the 9:30 hearing. Based on that representation, the Court agreed not to immediately dismiss the case, but to continue the dismissal hearing to August 13, 1996 at 9:30 a.m. so that King could be heard on the eligibility issue.

However, the Court's Order requiring Ms. King to immediately remit her fees in this case to the Court to satisfy the case filing fee remained in effect and Ms. King was advised of this fact. Ms. King assured the Court that she would comply with that point of the Order.

5. At the August 13, 1996 hearing, counsel and the Debtor again failed to appear. A review of the Court's records at that time indicated that counsel had failed to remit the fees in this case to the Court. As a result, the Court entered the August 15th Show Cause Order that facilitated this hearing.

6. King did appear at the August 27th hearing albeit several minutes late, stating that she had failed to appear at the August 13, 1996 hearing because she believed the case had been continued. The Court accepts this explanation as a number of hearings had to be continued from that date due to the Trustee's absence due to a death in his family. King also represented to the Court that she had remitted her fees to the Court on August 22, 1996. The Court's records confirm this fact. Further, King did not protest the dismissal of the Chapter 13 case based on the fact that the Debtor was not an individual and was not eligible to file Chapter 13.

7. In response, the Court warned King that sanctions were appropriate based upon her behavior in this and previous cases, including her failure to appear on time, or at all, for hearings and her failure to comply with the July 24th Order, which required her to remit her fees immediately, not a month thereafter. Further, the Court reminded counsel of three recent cases in which

she demonstrated less than appropriate professional conduct. The Court brought her attention to: In re Heath, in which Judge Wooten sanctioned her for repeated failures to appear at scheduled hearings; In re Winchester, in which her failure to remit funds to the Trustee under the Court's garnishment order, as the Debtor's employer in addition to her counsel, caused the client's case to be brought on for dismissal, and In re Davis, in which she failed to file the Creditor's Matrix with the petition as required, or thereafter even after being notified by the Clerk of the need to do so.

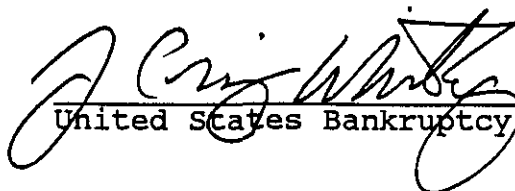
However, the Court elected not to sanction King at this point, but admonished her that future repetitions of this type of conduct would result in sanctions. The Court also dismissed the current Chapter 13 case based on a lack of eligibility, as the Debtor is an estate rather than an individual, and may not be a Chapter 13 Debtor under Code section 109(e).

THEREFORE, THE FOLLOWING IS ORDERED:

1. The Show Cause Order of August 15, 1996 is deemed satisfied without sanctions being imposed at this time.

2. The current Chapter 13 case, number 96-31309, is hereby DISMISSED.

This is the 30 day of ^{Sept.}~~August~~, 1996.


United States Bankruptcy Judge